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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

Nos. 4-9

THE UNITED STATES, *Petitioner*
vs.
GERLACH LIVE STOCK COMPANY (a corporation)

THE UNITED STATES, *Petitioner*
vs.
J. SHELDON POTTER

THE UNITED STATES, *Petitioner*
vs.
MARTIN ERRECA

THE UNITED STATES, *Petitioner*
vs.
JAMES J. STEVINSON (a corporation)

THE UNITED STATES, *Petitioner*
vs.
ARCHIBALD J. STEVINSON

THE UNITED STATES, *Petitioner*
vs.
3-H SECURITIES COMPANY

On Certiorari to the Court of Claims.

RESPONDENTS' REPLY TO SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

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We were informed on September 22, 1949, that a Supplemental Brief was to be filed by the United States and we were furnished with a typewritten copy thereof. As it is directed principally at arguments advanced by the brief of *amici curiae* and we are informed that *amici curiae* are preparing a brief in reply to this Supplemental Brief, we will not increase the burden of the Court by an additional brief on behalf of respondents, except to call the attention of the Court to that part of the Supplemental Brief (pp. 38-40) where House Document No. 332, 65th Congress, First Session, is considered. It is there sought to give the impression that that Document expresses the views of the governments that it was feasible to render the San Joaquin River navigable, whereas, as the Court of Claims points out in its opinion on demurrer, the contrary view of the Government on that subject was expressed later in House Document No. 791, 71st Congress, Third Session.

House Document No. 332 (65th Congress, First Session) is a report on the preliminary examination and surveys of the San Joaquin River, California, with a view to its improvement up to a point at or near Herndon by means of locks and dams or otherwise. Among the conclusions given in the statement of general conditions are the following from pages 13 and 17 of the report:

> *"It is believed that full use will be made for purposes of irrigation of all the water that can be so stored, and that no assistance to navigation*

can be expected from such sources." (p. 13.) (Italics ours.)

"The flood condition in the San Joaquin Valley is not as serious as in the Sacramento Valley for the following reasons:

First. The floods are not as great.

Second. They occur during the irrigating season.

Third. In the delta region where the channels are generally leveed, there are several channels available to carry the flood waters. On the middle section of the river there are some low levees, but as a rule but little effort has been made to confine the river to its channel, and it spreads through many side sloughs over great areas of bottom lands, which are only used for grazing when the water subsides." (p. 17.)

Paragraph 55, page 38 of the report is as follows:

"It is quite possible that the distribution of water diverted by canals, and especially of that used in flood irrigation, may not have been such as to produce the greatest economic results; e.g., the amount used on grazing or wild-grass lands may have been excessive as compared with that used to grow alfalfa, when the comparison is based upon the quantity of beef which each form of irrigation produced per acre. Whether or not this has been or is now the case the facts are that the area of agricultural lands needing water is greater than the river can supply, even when the most advantageous and economical use has been developed, *and that the hope that better irrigation*

practices would make available more water for navigation use is futile." (Italics ours.)

The proposed act to restore the navigability of the stream was never enacted into law and the Government never carried out the recommendation to prevent diversions for irrigation purposes.

The later report of the army engineers on the San Joaquin River is contained in House Document No. 791 (71st Congress, 3d Session), dated February 27, 1931. The following paragraphs are from the report of Lytle Brown, Major General, Chief of Engineers, to the Secretary of War, contained in said document:

"5. The existing project for the improvement of the San Joaquin River for navigation provides for a channel 26 feet deep at mean lower low water from the mouth of New York Slough to the city of Stockton, a distance of 45 miles, with suitable passing places and a turning Basin at Stockton; for certain local channels 9 feet deep in the vicinity of Stockton; and for snagging, removing overhanging trees, and constructing wing dams from Stockton to Hills Ferry, 86 miles, to facilitate light-draft navigation on this part of the river during higher stages. The 26-foot channel to Stockton was authorized in 1927 at an estimated cost of $3,715,000, of which local interests contribute $1,307,500 in cash, besides furnishing all lands and rights of way. It will be completed about 1933. At the present time there is a controlling depth of 9 feet to Stockton. Between Stockton and Hills Ferry there is ordinarily a 6-foot depth from April to June, but navigation

is usually impracticable during the remainder of the year. During the 10 years ending 1929 the commerce of the section below Stockton averaged 826,000 tons annually. There is no appreciable commerce above that point. The division engineer is of the opinion that the existing project is sufficient for the present and prospective needs of navigation. *Further improvement above Stockton would require canalization, and the cost would be substantially in excess of the anticipated benefits.*" (p. 6.) (Italics ours.)

"12. The State of California has long realized the importance of a program for the conservation of the waters of the Great Central Valley and has expended nearly $1,000,000 for surveys and studies of this problem. The broad solution of this problem generally agreed upon is that the streams in the mountainous area should be set aside for private power development and placer mining; that the flow of the streams should be regulated by reservoirs in the foothills; that provision should be made for the transportation of the excess waters of the Sacramento River to the San Joaquin Valley; and that these developments should be undertaken step by step in accordance with a comprehensive program. Federal and State authorities have examined numerous feasible reservoir sites and are agreed that, considering the present needs and the cost, the Kennett site on the Sacramento River and the Friant site on the San Joaquin River are first and second respectively in order of importance and priority. The Kennet Reservoir would serve the combined purposes of navigation, flood control, power de-

velopment, irrigation, and salinity control, *while the Friant Reservoir would serve chiefly power development and irrigation.*" (p. 8.) (Italics ours.)

"20. Friant Reservoir.—For the relief of the area in the southern part of the San Joaquin River, where pumping has depleted the ground water reserves to an extent which jeopardizes some 200,000 acres of valuable and fertile land, it is proposed to construct a storage and diversion dam at Friant on the San Joaquin River and a canal 165 miles long to the vicinity of Bakersfield on the Kern River. The reservoir would have a useful storage capacity of 270,000 acre-feet. In addition to supplying water to the area referred to, this reservoir would also furnish water by canal to lands in the Madera irrigation district, which also has at present a deficient supply. The development of a small amount of hydroelectric power is contemplated in connection with this project. The estimated cost of the project is as follows:

Reservoir and water rights	$17,419,000
Bakersfield Canal	27,826,500
Madera Canal	2,500,000
Power plant	1,445,000
Total	$49,190,500

"It is estimated that this project would produce 600,000 acre-feet of water annually for which the farmers in the area needing relief can afford to pay on the average about $2.50 per acre-foot, or a total of $1,500,000 annually. It is claimed that the profits from local business, the local tax returns, and other indirect local benefits resulting

from the retention of this land in cultivation, are worth about an equal amount, thus bringing the total estimated irrigation benefits to $3,000,000 annually." (p. 10.)

"26. *The Friant project will not benefit navigation, and no Federal contribution to that project appears justified.*" (p. 13.) (Italics ours.)

ated, San Francisco, California,
September 28, 1949.

Respectfully submitted,

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